CAPTURING FEEDBACK

Charter for the Oversight Board

In a global consultation process, Facebook sought feedback on a draft charter for the Oversight Board. This feedback was captured in a report published in June and informed the development of the updated charter. Coinciding with the publication of the revised charter for the Oversight Board, this document summarizes the elements from the draft charter; the feedback we've received; and the rationale behind our decisions on the design of this board as laid out in the charter.

DRAFT CHARTER	TOPIC	FINAL CHARTER	IMPLEMENTING FEEDBACK	PUBLIC CONSULTATION REPORT
QUESTION 1 What is the right number of members to balance the ability to work as a group with the need to maximize diversity in expertise and background?	Board Size	**ARTICLE 1, SECTION 1. SIZE** The board will consist of no less than eleven members. When it is fully staffed, the board is likely to be forty members. The board will increase or decrease in size as appropriate.	Based on research and testing, our current working assumption is that cases will be heard in panels of five members. We set the minimum number of board members at eleven so that at least two panels can be constituted at any given time. Over time, the board is expected to grow to approximately forty members, in order to allow for increased diversity in expertise and background.	*Facebook has suggested up to forty members on the initial board, which would be global in nature and organized to operate and decide on cases in panels. Some felt this number was too small and expressed concern over "docket management" and "caseloads." Others, conversely, found the number to be unwieldy and unmanageable. Still others, on a more practical level, suggested that the board include forty-one members, in case a tiebreak would be required.* (p. 21)
QUESTION 2 How can the first members of the board be chosen in a way that is transparent and reasonable?	Member Selection Process	**ARTICLE 1, SECTION 8. SELECTION AND REMOVAL OF BOARD MEMBERS** To support the initial formation of the board, Facebook will select a group of co-chairs. The co-chairs and Facebook will then jointly select candidates for the remainder of the board seats. The trustees will formally appoint those members. Thereafter, a committee of the board will select candidates to serve as board members based on a review of the candidates' qualifications and a screen for disqualifications. Facebook and the public may propose candidates to the board. The trustees will formally appoint the members . . .	In order to avoid the recurring problem of selecting a board to select a board, Facebook will appoint a small group of initial members based on a transparent and consistent set of criteria. Together, those members and Facebook will select candidates to fill the remaining board seats together. Moving forward, both Facebook and members of the public will submit candidates for consideration through a recommendations portal. The board itself will select new members, while trustees will confirm these appointments. This arrangement will ensure a balanced set of responsibilities across Facebook, its user community, the board and the trust — all of whom will have a role in the selection process.	*Some recommended that membership be left to a fully democratic vote by Facebook users; others worried that a vote would open up the process to pre-existing bias. Some advocated for a hybrid approach, combining selection procedures so that Facebook, outside groups, and users could all participate. One recurring proposal was the establishment of a selection committee, a recommendation that participants raised at each of Facebook's six regional workshops. To some, delegating this responsibility away from Facebook would provide a "critical layer of separation" on day one of the board's establishment . . . At the same time, others recognized the efficiency of Facebook's proposed approach, which would avoid "the Kafkaesque process of drafting a separate committee to pick the . . . committee." Facebook would still have to determine which organizations and representatives would get a seat at the selecting table."* (p. 18)
QUESTION 3 How should future selection be made to ensure continued diversity, expertise and independence?	Diversity, Representation and Qualifications	**ARTICLE 1, SECTION 2. BOARD COMPOSITION AND MEMBER QUALIFICATIONS** For the board to serve its purpose effectively, members must possess and exhibit a broad range of knowledge, competencies, diversity, and expertise. Members must not have actual or perceived conflicts of interest that could compromise their independent judgment and decision-making. Members must have demonstrated experience at deliberating thoughtfully and as an open-minded contributor on a team; skill at making and explaining decisions based on a set of policies or standards; and familiarity with matters relating to digital content and governance, including free expression, civic discourse, safety, privacy and technology.	Public feedback stressed the importance of a diverse board, in all aspects of diversity: cultural and professional background, expertise and knowledge, geography, etc. This feedback has been incorporated in the updated charter. Given that the board will never be able to perfectly represent Facebook's billions of users, members will need to apprehend a wide range of views. As such, the updated charter emphasizes the need to identify members who have demonstrated the ability to deliberate thoughtfully and openly.	*With only forty members, it has been said that the board "cannot hope to represent every single view on the balance between protecting free speech and regulating harmful speech." Nonetheless, many stressed the need for the board's composition to reflect as many segments of society as possible ... [with a] focus on a multidisciplinary, multi-stakeholder approach to membership selection. Some favored candidates with high name recognition, who could lend credibility to the board. Others preferred a different approach, stressing that the board "doesn't need people with public profiles." Instead, it should include expert-level candidates with demonstrable professional experience, a willingness to be "engaged and involved," and expertise in key fields of study . . .* *. . . Above all, a general consensus emerged with regard to seeking out board members who can serve all users, through an open, deliberative process. Stressing, for example, that "the board is not a parliament," many of those consulted discouraged a culture where members advocate for their particular constituency. It would be "practically impossible" for the board to "provide representation for all," given the sheer diversity of users on the platform. Instead, it would be preferable for each member to serve "not on behalf of their organizations," but as a representative of the entire Facebook community of users.* (p. 20)
	Removal	**ARTICLE 1, SECTION 8. SELECTION AND REMOVAL OF BOARD MEMBERS** . . . The trustees may remove a member before the expiration of their term for violations of the code of conduct, but they may not remove a member due to content decisions they have made.	Public feedback stressed the need for more clarity over the terms, conditions and process for removal of board members. The updated charter reflects that the board's bylaws, which will be public and reviewed before final adoption with an initial group of members, will outline the conditions under which members could be removed. As interlocutors expressed concern that Facebook would hold removal powers, the updated charter confirms that this responsibility will lie with the trust, not Facebook.	*Under Facebook's proposal, the company would not be allowed to remove any members "except if the member has violated the terms of his or her appointment." Generally, this proposal met with agreement. However, observers called for increased specificity on these terms and for the board itself to be involved in removal decisions. Removal, it was argued, "should be based only on 'reasons of incapacity or behavior that renders [members] unfit to discharge their duties, such as serious grounds of misconduct or incompetence.* (p. 21)
QUESTION 4 What is the optimal term length for members?	Term Length and Renewals	**ARTICLE 1, SECTION 3. TERM** Each member will serve for a three-year term, for a maximum of three terms. Trustees will oversee the approval of term renewals. Member appointments will be staggered over a three-year period to ensure continuity and allow for the appointment of members over time.	Three-year terms ensure that members have enough time to execute their responsibilities effectively. Allowing experienced members to serve up to three terms avoids excessive turnover, while also allowing for continuity and institutional knowledge. At the same time, term limits and staggered appointments ensure that the board will continue to include fresh perspectives and a variety of expertise.	*Facebook has suggested that board members serve a fixed term of three years, renewable once. Other suggestions included varied term lengths; staggered appointments; and shorter term lengths, given the "rapid pace of change" in content and technology. However, while some felt that three years was too long, others felt it was not long enough. The latter believed that more time is necessary for members to become acquainted with their responsibilities, as well as the complexities of content governance.* (p. 21)
QUESTION 5 How should requests to the board be surfaced?	Request for Review	**ARTICLE 2, SECTION 1. SCOPE** In instances where people disagree with the outcome of Facebook's decision and have exhausted appeals, a request for review can be submitted to the board by either the original poster of the content or a person who previously submitted the content to Facebook for review. Separately, Facebook can submit requests for review, including additional questions related to the treatment of content beyond whether the content should be allowed or removed completely. Detailed procedures on submission and requirements for review by the board will be publicly available . . .	The updated charter reflects the feedback that requests for review should come both from Facebook and users.	*The draft charter explained that cases will come before the board through two avenues. First, Facebook itself will request review of pieces of content that are particularly "important and disputed." Second, users will also be able to request a review, after undergoing Facebook's internal appeals process.* (p. 23)
	Special Procedures: Request for Policy Guidance	**ARTICLE 3, SECTION 7.3 REQUEST FOR POLICY GUIDANCE** Independent of any pending case, Facebook may request policy guidance from the board. This guidance may concern the clarification of a previous decision by the board or guidance on possible changes to Facebook's content policies. All guidance will be advisory.	Reflecting feedback, the charter explicitly notes that the board will be able to provide a policy advisory opinion, separate from its review of an individual case.	*As for how the board's [policy] recommendations would be formulated, some felt that advisory opinions would be helpful both reactively and proactively. In other words, the board should make policy recommendations both in response to individual cases of disputed content and in response to new and emerging issues, unconnected to specific appeals.* (p. 29)
QUESTION 6 How should the board select specific cases for consideration from the requests it receives?	Case Selection	**ARTICLE 2, SECTION 1. SCOPE** . . . The board has the discretion to choose which requests it will review and decide upon. In its selection, the board will seek to consider cases that have the greatest potential to guide future decisions and policies. In limited circumstances where the board's decision on a case could result in criminal liability or regulatory sanctions, the board will not take the case for review. The board will establish its own set of procedures that its staff will use to select a pool of cases from which the board can choose. Once a case is selected, the board will notify the submitting person, the person who originally posted the content, and Facebook. **ARTICLE 3, SECTION 7.2. EXPEDITED REVIEW** In exceptional circumstances, including when content could result in urgent real world consequences, Facebook can send cases to the board for an automatic and expedited review, which the board will accept and review as quickly as possible.	Feedback was split with regard to the process of case selection, although a general consensus supported additional clarity on selection criteria. As such, the final charter provides some guidelines on what will be in scope (i.e. cases with great potential to guide future policies) and out of scope (i.e. cases where the decision could result in criminal liability or regulatory sanctions). The bylaws will provide additional details on criteria, such as what constitutes difficult or contested cases. As an independent body, the board will have the ability to choose its own cases through operating procedures that it establishes for itself. In limited circumstances, Facebook also will be able to refer cases for automatic review. Feedback from the public consultation stressed the need for a mechanism for expedited review, given that some cases have significant and immediate real-world impact. Such cases are particularly consequential for safety and speech and, thus, the board will review them through an expedited process.	*[Respondents suggested that] "selection criteria would need to be outlined in general terms in the charter and specified by the independent board through transparent, internal guidelines." If the expectation is for the board to hear "contentious cases," then it would be "important to define what a contentious case is." Given that difficult or contentious cases are a matter of subjectivity, the board will "need basic requirements for what types of cases [it] should hear." Feedback varied with regard to what those requirements and criteria should be. Suggestions included the following: a potential for real-world harm; cases without precedent; high-profile cases with international implications; highly emblematic cases; and content that deals with freedom of speech, hate speech, or terrorist propaganda.* (p. 23)
QUESTION 7 How can the board ensure cultural sensitivity while also issuing decisions that will affect 2.3 billion people around the globe?	Expert Advice and Other Information	**ARTICLE 3, SECTION 3. INFORMATION FOR REVIEW** . . . The board may gather additional information, including through subject matter experts, research requests or translation services, that may be required to provide additional context for the content under review. In addition, the board may, at its discretion and where applicable, allow additional written submissions by individuals and groups, immediately depicted or impacted by the content in question.	The board will have the explicit power to draw on a pool of experts, whom they can call on to provide cultural, technical or other contextual information. With regard to additional information from parties other than Facebook, the charter confirms that the board will be able to receive written submissions from certain individuals and groups who are immediately depicted or impacted by the case under review. The bylaws will stipulate requirements for these submissions. The board will also have the ability to request briefs from interested parties.	*[M]any felt that the board would need independent expertise at their disposal, especially when reviewing content whose meaning and impact was highly dependent on local context. Interlocutors generally recommended "supplementing the board itself with a network of experts to ensure that the necessary linguistic, cultural, and socio-political expertise is available when the board makes a decision." Multiple workshop and roundtable participants suggested the development of a roster or pool of experts, which the board could then call upon as needed. Another suggestion was to include technical experts who could advise the board on the feasibility and scalability of its recommendations.* *As for seeking additional inputs from other third parties, many supported a mechanism for "pertinent stakeholders" to present their views to the board. On the whole, both advocacy groups and workshop participants supported the proposal for the board to build a mechanism to accept "expert third party opinions," similar to amicus briefs. Balance will be required, however, in order to guard against an amicus process devolving into a mechanism for professional lobbying or unfair influence by well-resourced organizations."* (p. 26-27)
	Panel Composition	**ARTICLE 3, SECTION 2. CASE REVIEW AND CONFIDENTIALITY** Each case will be reviewed by a panel of board members, with at least one member from the region. The board's staff will organize the panels . . .	Panels will include at least one representative from the region implicated in the content. This reflects the preponderance of feedback that stressed the need for including regional voices in the board's decision-making. At the same time, the board will also have access to outside experts in instances where cultural nuances are crucial to understanding the facts of the case. (For more information, refer to the row on "Expert Advice and Other Information").	*As for the composition of the panels, some recommended that panels be assigned randomly. Others suggested to arrange them thematically, in order to leverage the types of expertise within the board; for example, panels of experts could be formed specifically to deal with hate speech. Alternatively, panel assignment could factor in regional representation, especially for cases that heavily involve an understanding of local context, cultures, and norms. While some advocated for entirely regional or national boards, others worried that such an arrangement would increase the risk of bias and influence or co-optation by states.* (p. 24)
QUESTION 8 How can Facebook ensure the board's independent judgment?	Funding and Membership Compensation	**ARTICLE 1, SECTION 5. COMPENSATION** The trust will arrange for compensation of members for their service on the board. Member compensation will be issued on a schedule based on the fulfillment of duties and will not be conditioned or withheld based on the outcome of board decisions.	During the public consultation process, a general consensus supported establishing an independent trust, which would oversee compensation for board members. The updated charter reflects this recommendation, and Facebook has proceeded with setting up the trust.	*Regarding compensation, a few disagreed with Facebook's position in the draft charter. They felt that service on the board should be a voluntary position, given that "he who pays the piper calls the tune . . . The majority of others, however, argued that experts should be remunerated for their time and effort, but that compensation should be fixed and standard, as well as structured in such a way that Facebook cannot revoke resources in response to board decisions. One suggestion included having Facebook "fund the board's compensation and its supporting staff by awarding an annual budget figure that is commensurate with Facebook's evaluation of the board's value." Commentators generally supported the idea of "platform oversight bodies ... [that are] financially independent," and the most common suggestion in this regard was the establishment of a separate trust, endowment or foundation."* (p. 31)
	Organization	**ARTICLE 3, SECTION 1. ADMINISTRATION** The board will have a full-time staff. Staff will be responsible for supporting the board's administration and operations. Their primary duties will include reviewing case submissions and coordinating outside research and statements for selected cases. Their work will enable the board to review cases, issue decisions and recommendations, publish decisions and release reports.	Public feedback has reinforced the need for the board to have its own support staff, who would provide assistance with the administration of cases. The updated charter reflects this recommendation.	*There was a general consensus that the board would need staff support, in order to help review cases and liaise with Facebook regarding the implementation of decisions, while also ensuring that potential cases meet certain procedural requirements. Other functions could include assessing amicus briefs, reviewing past board decisions, conducting general research, serving as rapporteur, liaising with government interlocutors, and generally relieving board members of "onerous administrative tasks that will detract from the board's purpose."* *Some saw the board's staff as a secretariat function; others compared it to a judicial clerkship. In the case of the latter, some observers expressed concern that the board's staff could "wield immense power," especially if they were to be involved in drafting decisions and deciding on case selection. Others pointed out a potential imbalance between part-time board members and full-time staff, which could result in the latter actually "hold[ing] the power, because they will be the ones day in, day out, year after year doing this work."* (p. 32-33)
QUESTION 9 What will ensure the board's commitment to its purpose and values?	Ethics and Code of Conduct	**ARTICLE 1, SECTION 6. RESPONSIBILITIES** Members will fulfill the duties set out in their contracts and the code of conduct to safeguard the independence, integrity, confidentiality and professional reputation of the board. Members will collaborate in decision-making to foster an environment of collegiality, and issue principled decisions and policy recommendations using clearly articulated reasoning. In addition, members will contribute towards building a board that, as an institution, upholds and advances free expression. Members will protect the privacy of the people using Facebook's services, and will not publicly disclose confidential or proprietary information about people or Facebook unless previously agreed to by Facebook and the board.	The updated charter reflects key responsibilities that members must adhere to, such as confidentiality and principled decision-making. Additionally, public feedback supported the development of a code of conduct, which would establish rules to safeguard independence and accountability. This document will be attached to the bylaws, which will be released publicly.	*. . . [S]uggestions for accountability varied. These included the establishment of an ethics subcommittee; the development of a recusal process; the disclosure of financial (and other) conflicts of interest; and the promulgation of a specific code of conduct.* (p. 21)
	Amendments	**ARTICLE 6, SECTION 1. AMENDMENTS** This charter may be amended only with the approval of a majority of the individual trustees and with the agreement of Facebook and a majority of the board.	The charter is designed as the foundational governing document for the board. Thus, this document — which sets out the board's purpose — should remain stable over time. In comparison, the subsidiary bylaws may need to be more flexible and open to amendment, particularly as the board evolves. The bylaws will focus on the board's operating processes and procedures.	*. . . [S]ome have called for Facebook to . . . adopt "something like a constitution: a code of fundamental principles that would be harder to amend than the company's malleable content moderation rules."* (p. 33-34)
	Special Procedures: Board Review	**ARTICLE 3, SECTION 7.1 BOARD RE-REVIEW** Panel decisions will be circulated to all board members before they are made final and public. Should a majority of the entire board request a re-review of a panel decision, a new panel shall be convened and conduct an expedited review.	The charter includes provisions for a re-review mechanism, specifically in cases where a panel's decision is disputed. This reflects feedback from the public consultation.	*Some issues, especially in cases where panels disagree with one another, may require the board to meet en banc, with a final decision coming from the board as a whole.* (p. 24)
QUESTION 10 What's the right level of transparency to give the public insight into the board's thinking while still protecting the safety and privacy of users and board members?	Public Communication on Decisions	**ARTICLE 3, SECTION 6. PUBLIC COMMUNICATION** Each decision will be made publicly available and archived in a database of case decisions on the board's website, subject to data and privacy restrictions. **ARTICLE 3, SECTION 4. DECISIONS** To encourage judgment based on open and frank deliberations incorporating all voices, panels will strive to make decisions by consensus. If a consensus cannot be reached, a majority of the panel will resolve a case. In such instances, the reasons for divergence may be included in the panel's decision to include all views and give voice to those who had reservations or concerns . . .	The public consultation process highlighted the critical importance of transparent decision-making. The updated charter reflects this recommendation. Research and testing, including a series of practical simulations held by Facebook, supported establishing decision-making by consensus in order to promote deliberation, allow differing opinions to be considered and ensure greater unity of purpose. However, in order to reduce the number of 'no decision' decisions, panels may resolve a case based on the majority. In this situation, panel decisions will incorporate all views and give voice to all sides of the deliberation.	*. . . [P]anels are expected to issue public explanations of their decisions, as stated in the draft charter. As one commentator observed, "If, as part of this oversight board, there will be reasoned decisions that will be published, we think that that is a step in the right direction." Other ideas for transparency include a review period for assessing user opinions, as well as an impact analysis to assess whether the board's decisions align with public expectations of the board's duties and responsibilities . . . Facebook has also suggested that, "[s]hould a panel decision not be unanimous, a member who is in the minority may include his or her perspective as part of the explanation shared." This presupposes decision-making by majority rule. Should unanimous decisions not be required, many recommended allowing dissenting opinions as a mechanism to ensure transparency and public debate. Others supported dissents as a practical measure, given that the type of people chosen for the board will likely "not be quiet if they disagree."* (p. 25)
	Panel Anonymity	**ARTICLE 3, SECTION 2. CASE REVIEW AND CONFIDENTIALITY** . . . Whereas membership of the entire board will be public, the composition of individual panels may remain anonymous to ensure the safety and independent judgment of panel members.	Security of board members is a top concern, as is the potential for third parties to exert undue influence over individual members. Panel anonymity provides a layer of protection in this regard.	*While citing security and privacy concerns of board members, Facebook indicated that panels will issue their decisions without attribution. Trade-offs would be required to balance transparency, security, and privacy; feedback in this regard was split. Some argued that anonymity on panels could contribute to a culture of collective and consensus-based decision-making by the board, while also increasing the likelihood of impartiality and objectivity.* (p. 25)
	Resolution	**ARTICLE 3, SECTION 5. RESOLUTION** The board can decide to allow or remove the content properly brought to it for review. The board can also uphold or reverse a designation that led to an enforcement outcome, such as deciding that the content depicts graphic violence and should therefore display a warning screen. Facebook may make available to the board additional resolutions or other technical remedies.	In cases under its review, the board will examine Facebook's decision and determine whether the content should remain on the platform. Over time, the board may look to decide upon other actions (e.g. downranking or applying interstitial warnings). However, these options may not be available when the board first begins it operations.	*Facebook has proposed that the Oversight Board will focus on providing independent, binding judgment on removing or permitting content, with individual cases being heard by panels.* (p. 8) *[Observers] would like more information on how the board will interact with . . . algorithmic downranking . . . This feedback suggests that Facebook still needs to communicate the "level of ambition" it expects out of the board — while managing expectations over what a forty-person body could possibly achieve.* (p. 36)
QUESTION 11 How should the board ensure coherence, as decisions from different cases and panels could result in inconsistent conclusions?	Precedent	**ARTICLE 2, SECTION 2. BASIS OF DECISION-MAKING** Facebook has a set of values that guide its content policies and decisions. The board will review content enforcement decisions and determine whether they were consistent with Facebook's content policies and values. For each decision, any prior board decisions will have precedential value and should be viewed as highly persuasive when the facts, applicable policies, or other factors are substantially similar. When reviewing decisions, the board will pay particular attention to the impact of removing content in light of human rights norms protecting free expression. **ARTICLE 4. IMPLEMENTATION** The board's resolution of each case will be binding and Facebook will implement it promptly, unless implementation of a resolution could violate the law. In instances where Facebook identifies that identical content with parallel context — which the board has already decided upon — remains on Facebook, it will take action by analyzing whether it is technically and operationally feasible to apply the board's decision to that content as well . . .	Regarding the board itself, the updated charter confirms that panels will defer to past decisions when applicable. This reflects the feedback received from consultation. Facebook will immediately implement the board's content decisions. The board can also request that its decision be applied to other instances or reproductions of the same content. Facebook will implement such requests to the extent technically and operationally practicable.	*Overall, feedback generally supported some sort of precedent-setting arrangement. Most expressed hope that the Oversight Board could support "some idea of ... continuity, some idea of stare decisis" that could evaluate "multiple fact patterns and have some precedential weight." Response from the public questionnaire suggested the same. The majority of respondents (66%) stated that "considering past decisions is extremely to quite important," while almost a third (28%) consider past decisions as "somewhat important. Others felt that precedent would need "to be considered carefully, as ... there will need to be overruling rules articulated in order to reverse panel decisions that are later seen to be out of step with changing circumstances." Furthermore, it was argued, "a strict coherence rule may cause a situation where the first panel to discuss a certain issue might set a standard that may not be reconsidered later. This will create a sense of arbitrariness and stagnation." Others argued that since social media is a rapidly changing industry, precedent should not prevent review of future, similar content.* (p. 27-28).
	Policy Recommendations	**ARTICLE 3, SECTION 4. DECISIONS** . . . A final decision will include a determination on the content, as well as a corresponding plain language explanation of the board's rationale. At the board's discretion, the final decision may include a policy advisory statement, which will be taken into consideration by Facebook to guide its future policy development. **ARTICLE 4. IMPLEMENTATION** . . . When a decision includes policy guidance or a policy advisory opinion, Facebook will take further action by analyzing the operational procedures required to implement the guidance, considering it in the formal policy development process of Facebook, and transparently communicating about actions taken as a result.	The charter reflects that the board will be able to issue policy recommendations to Facebook, as part of its overall judgment on each individual case. Facebook will consider the recommendation during a formal policy development process, and publicly communicate the resulting action. Hence, the board's decisions are designed to have lasting influence over Facebook's policies, procedures and practices.	*Regarding implementation, the expectation is that Facebook would be held accountable for explaining publicly how it acted on the board's guidance. "As a minimum," it was noted, "Facebook should respond to the board's comments letting it know why, why not, and how Facebook decided to adopt the recommendations." In some cases, for example, the board may suggest a policy change that is not technically feasible. In this context, Facebook could "decline to adopt the board's recommendations" — but, in doing so, it should set out its reasoning in writing.* (p. 29)